

David O. Carson, Esq.
Copyright GC/I&R
P.O. Box 70400
Southwest Station
Washington, DC 20024

RE: 2006 DMCA Anticircumvention Rulemaking

June 2, 2006

Dear Mr. Carson,

Please find below my answers the questions asked in your letter dated May 18, 2006. I will also send a hard copy of this letter with two CDs containing my presentation from the hearing and a sample class presentation. These files are too large to send by email.

I would, of course, be happy to answer any further questions or clarify my responses.

Thank you for the opportunity to participate in the rulemaking.

Sincerely,

Peter Decherney
Assistant Professor of Cinema Studies
University of Pennsylvania

1. Please describe for us how a film studies professor would use your proposed exemption in practice. Specifically, how would you use the copy of the motion picture in preparing for your class instruction? In describing the use, please answer the following questions:

- **Would you make a complete additional copy of the motion picture to support the use, or merely copies of portions of the work?**

The exemption proposed in our first class is intended to be used for clips, not entire works. As a result, media professors should only need to copy portions of a work in order to make a clip. I currently copy only portions of works when making clips.

- **Where and in what format would such a copy exist (e.g. laptop hard drive, networked desktop, network server, etc.)?**

The University of Pennsylvania Cinema Studies Program currently stores its clips on portable, external hard drives kept in a locked room. We also have the capacity to stream clips from a secure server to authenticated users. Copies of clips can be stored on portable media for use in a class and then erased or destroyed. We use a variety of formats including MPEG2, MPEG4, .MOV, .AVI, and Real Player codices.

- **Who would have access to such a copy?**

The University of Pennsylvania Cinema Studies Program limits access to cinema studies faculty. In examples of similar libraries (at New York University and UCLA), access is controlled by the relevant department.

- **What kinds of software applications would be used for classroom presentations (e.g. would you burn a DVD to show, and/or use software-based applications like PowerPoint)?**

There are a variety of methods for effectively displaying clips. Compilations of clips could be burned to a DVD. Clips on a hard drive could be played directly using compatible software (Quicktime, Real, Windows Media Player, etc.). Streaming media on a secure server might be accessed from a remote classroom computer.

In my own teaching, I think it is essential to be able to use PowerPoint, Keynote, or other presentation software that allows multiple media to be used simultaneously—to be able to display combinations of text, still images, moving images, sound, and music. I also frequently show multiple moving images side by side for comparison.

- **What kinds of access would students have to the presentation materials (e.g. do you anticipate distance education uses like web-based access by students)?**

The current practice at the University of Pennsylvania is to limit access to faculty for use during class lectures. The class of works is limited to limit access to people teaching courses.

2. How often is it important or necessary to use clips from DVDs, as opposed to other media on which a work may be available, for educational purposes? In answering this question, please try to be as specific as possible. For example, how many times in an individual class session is high quality video necessary to the purpose of the use, and why? In how many classes in a semester are such uses necessary, and why? If the answers might vary from class session to class session or from film course to film course in the Cinema Studies Department, please describe how and to what extent the answers vary.

In the spring of 2006, the UPenn Cinema Studies Program offered 43 courses (<http://cinemastudies.sas.upenn.edu/courses/spring06.html>). In all of these courses the highest available quality image and sound were essential, because the courses dealt specifically with the analysis of media. These 43 courses are a small fraction of the total number of courses on campus that used multimedia work regularly. Hundreds of courses in History, Art History, Literature, Communication, Engineering, Fine Arts and elsewhere used moving images on a weekly basis. This spring, for example, I taught a course across the hall from a Chaucer seminar that used more clips than I did. (An attractive but awkward building design allows students and faculty in these two classrooms to see each other.) It is possible that in some courses, moving images are used as illustrations rather than as texts to be studied. It might be possible in these instances that analog quality is acceptable.

The use of multimedia in classrooms is the norm, and our proposed exemption would cover a tiny fraction of that use. But it would cover the classrooms most in need of high-quality media.

Based on an informal survey of the core UPenn cinema studies faculty, a typical 80-minute class session has a wide range of clips, stretching from 3 to 10. I've included the slides from my lecture on the development of computer graphics, which seems to be one of the highest. It uses 17 clips, occasionally using two at the same time. There are also stills or posters from dozens of films that are mentioned but not examined in detail.

An 80-minute class meets approximately 28 times a semester; three-hour seminars meet 14 times. An average course uses approximately 85-150 clips a semester. Still, I think, that is far fewer than the number of passages read in an average English class.

I would just add that organizations representing over 6000 media educators have filed comments in support of our exemption. Even our narrow exemption would address a large number of educators and students negatively affected by the ban on circumvention.

3. With respect to derivative or collective works which contain audiovisual works that are in the public domain and that are protected by technological protection

measures that prevent their educational use, are there problems with the use of this proposed class that are distinct from the first class proposed by you? In other words, if an exemption for the first class were to issue, would the second proposed class fall completely within that exemption? If not, please explain why.

I think the first proposed class would also cover educational uses of public domain multimedia works.

4. Do you have a compilation of clips used in one of your classes, either in Powerpoint or burned to DVD or CD, that could be made available to the Register for examination?

See attached CD.

The presentation labeled “FH22-presentation” is from FILM101: Film History (spring 2006). It uses 55 slides with 17 clips. 5 of the clips are taken from DVD “extras” (i.e. material only available on the DVD release). All of the clips are in MOV or MP4 formats. The average clip length for this lecture is 2 minutes and 7 seconds. But many of the clips are much longer than I actually play them to leave some leeway for my extemporaneous discussion of the clip. More than three quarters of the clips are on the screen for under 90 seconds.

5. Please provide us with a copy of the Powerpoint presentation that you exhibited at the April 3 hearing.

See attached CD. Note that on this CD, the clips are all over 5 minutes, but I never showed any clip for longer than 40 seconds.

6. Are specific types of ancillary material are important or necessary for use in media studies classes? What are they, and why?

Media studies is the study of media. The media studies classroom requires the use of examples of media: still images, sound, music, film clips, video clips, TV clips, Internet websites, phone and PDA content, and other multimedia works. None of these objects are ancillary. The field depends on their use. Without the ability to use media in the classroom, there is no media education.